

D/L. 44
February 1, 2023
MNS

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (DB) 25 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.01.2023 in connection Sessions Case No. 69 of 2022 arising out of Kalimpong Police Station Case No. 12 of 2022 dated 02.06.2022 under Sections 376D/376(2)(j)(k)(l) of the Indian Penal Code.

And

In the matter of: Raphael Chettri

.... Petitioner

Ms. Supriya Singh

... for the petitioner

Mr. A. S. Chakraborty,
Mr. S. S. Sikdar

... for the State

Learned counsel for the petitioner contends that as far as the allegation against the present petitioner is concerned, there is patent contradiction between the statement made under Section 161 and the victim's own statement under Section 164 of the Code of Criminal Procedure. Although, in the initial complaint and the statement under Section 161 of the victim's mother, it transpired that there was an incident of gang rape on May 31, 2022, the victim girl's statement under Section 161 clearly indicates that the incident with regard to Raphael, the present petitioner, allegedly occurred on May 11, 2022 at around 11 p.m.

Since there is patent discrepancy in the versions of the victim and the witnesses, inasmuch as there are 20 days between May 11 and May 31, 2022, which *prima facie* rules out the scope of there

being a concerted offence on the part of the co-accused persons, we are of the opinion that, considering the period of incarceration of the petitioner, that is, eight months, the petitioner ought to be granted bail.

Accordingly, CRM (DB) 25 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned District and Sessions Judge, Kalimpong. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date. The petitioner shall not make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)